

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MODERN FAUCET MFG. CO.

and

Case 21--CA--22650

CHAUFFEURS, SALES DRIVERS, WAREHOUSEMEN
& HELPERS LOCAL 572, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed by the Union 6 October 1983, the General Counsel of the National Labor Relations Board issued a complaint 14 November 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act.

The complaint alleges that on 17 August 1983, following a Board election in Case 21--RC--16842, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since 8 September 1983 the Company has refused to bargain with the Union and, in addition, has failed and refused to supply the Union with requested information about bargaining unit employees. On 23 November 1983 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 3 February 1984 the General Counsel filed a Motion for Summary Judgment. On 7 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed an opposition to the Motion for Summary Judgment and a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Company's answer admits its refusal to bargain and to furnish information that is necessary and relevant to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 21--RC--16842, establishes that pursuant to a Stipulated Election Agreement, an election was conducted on 25 September 1981. The tally of ballots showed that, of approximately 286 eligible voters, 157 cast ballots for and 119 against the Union; there were no challenged ballots. The Company timely filed objections to the election. After investigation, the Regional Director for Region 21 on 20 November 1981 issued a report recommending that the objections be overruled in their entirety and that the Union be certified. On 2 December 1981 the Company filed exceptions. On 14 July 1982 the Board issued a Decision and Direction ¹ in which it directed a hearing in connection with one objection, but adopted the Regional Director's findings and recommendations as to the remaining objections. On 6

¹ Not reported in Board volumes.

January 1983 the hearing officer issued a report recommending that the Company's objection be overruled. On 28 January 1983, the Company filed exceptions. On 17 August 1983 the Board issued a Supplemental Decision and Certification of Representative ² adopting the hearing officer's recommendations.

By letter dated 8 September 1983 the Union requested the Company to bargain and to furnish it with certain information about the unit employees and their terms and conditions of employment. By letter dated 5 October 1983, the Company refused the Union's requests.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. There are also no factual issues regarding the Company's admitted refusal of the Union's request for information. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following:

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All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. There are also no factual issues regarding the Company's admitted refusal of the Union's request for information. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

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Findings of Fact

I. Jurisdiction

The Company, a California corporation, has been engaged in the manufacture of plumbing supplies and metal stampings at its facilities in Los Angeles, California, where it annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 25 September 1981 the Union was certified 17 August 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees, shipping and receiving employees, warehousemen and truck drivers employed by the Employer at its facilities at 1700 East 58th Place, Los Angeles, California and 2401 East 103rd Street, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 8 September 1983 the Union has requested the Company to bargain and to supply it with information that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of employees in the appropriate unit. Since 5 October 1983 the Company has refused to bargain with the Union and to supply the information requested. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after 5 October 1983 to bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by refusing to supply the Union with the information it requested for the purpose of collective-bargaining, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement, and to provide the Union on request with information necessary for collective-bargaining.

To ensure that the employees in the appropriate unit are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 500 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (19th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Modern Faucet Mfg. Co., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Chauffeurs, Sales Drivers, Warehousemen & Helpers Local 572, International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, as the exclusive bargaining representative of employees in the bargaining unit.

(b) Refusing to supply the Union on request with information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement and provide the Union on request with information necessary for collective bargaining:

All production and maintenance employees, shipping and receiving employees, warehousemen and truck drivers employed by the Employer at its facilities at 1700 East 58th Place, Los Angeles, California and 2401 East 103rd Street, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Post at its facilities in Los Angeles, California, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

housemen and Helpers of America, as the exclusive bargaining representative of employees in the bargaining unit.

(b) Refusing to supply the Union on request with information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement and provide the Union on request with information necessary for collective bargaining:

All production and maintenance employees, shipping and receiving employees, warehousemen and truck drivers employed by the Employer at its facilities at 1700 East 58th Place, Los Angeles, California and 2401 East 103rd Street, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Post at its facilities in Los Angeles, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

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all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

15 May 1984

Don A. Zimmerman,

Member

Robert P. Hunter,

Member

Patricia Diaz Dennis,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Chauffeurs, Sales Drivers, Warehousemen & Helpers Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to supply the Union with information relevant and necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit and provide the union, on request, information necessary for collective bargaining:

All production and maintenance employees, shipping and receiving employees, warehousemen and truck drivers employed by the Employer at its facilities at 1700 East 58th Place, Los Angeles, California and 2401 East 103rd Street, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union with previously requested information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the bargaining unit.

MODERN FAUCET MFG. CO.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, City National Bank Building, 24th Floor, 606 South Olive Street, Los Angeles, California 90014, Telephone 213--688--5229.